

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5709

IN THE MATTER OF:

Served September 23, 1999

Application to Transfer )  
Certificate No. 440 from )  
RESPONSECARE MOBILE HEALTH )  
SERVICES, LLC, Trading as )  
RESPONSECARE & RESPONSECARE )  
MOBILITY SERVICES, to LIFESTAR )  
RESPONSE OF MARYLAND, INC., )  
Trading as LIFESTAR RESPONSE, )  
WMATC No. 310 )

Case No. AP-99-42

Investigation of Unauthorized )  
Transfer of Control from )  
RESPONSECARE MOBILE HEALTH )  
SERVICES, LLC, Trading as )  
RESPONSECARE & RESPONSECARE )  
MOBILITY SERVICES, WMATC No. 440, )  
to LIFESTAR RESPONSE OF MARYLAND, )  
INC., Trading as LIFESTAR )  
RESPONSE, WMATC No. 310 )

Case No. MP-99-27

Investigation of Failure to File )  
Annual Report and Order to Show )  
Cause Why Civil Forfeiture )  
Should Not be Assessed and Why )  
Operating Authority Should Not )  
be Suspended or Revoked, )  
Directed to: RESPONSECARE MOBILE )  
HEALTH SERVICES, LLC, Trading as )  
RESPONSECARE & RESPONSECARE )  
MOBILITY SERVICES, WMATC No. 440 )

Case No. MP-99-48

Investigation of Failure to Pay )  
Annual Fee and Order to Show )  
Cause Why Civil Forfeiture )  
Should Not be Assessed and Why )  
Operating Authority Should Not )  
be Suspended or Revoked, )  
Directed to: RESPONSECARE MOBILE )  
HEALTH SERVICES, LLC, Trading as )  
RESPONSECARE & RESPONSECARE )  
MOBILITY SERVICES, WMATC No. 440 )

Case No. MP-99-53

Case No. MP-99-27 was initiated on June 7, 1999, in Order No. 5621, for the purpose of determining whether LifeStar Response of Maryland, Inc., trading as LifeStar Response, WMATC Carrier No. 310, ("LifeStar"), and ResponseCare Mobile Health Services, LLC, trading as ResponseCare & ResponseCare Mobility Services, WMATC Carrier No. 440, ("ResponseCare"), (collectively "respondents" or "applicants"),

violated Article XII, Section 3, of the Compact by transferring a substantial part of the property of ResponseCare to LifeStar without Commission approval. Commission staff had been advised by LifeStar that a transfer had taken place. Staff subsequently confirmed that telephone calls placed to ResponseCare were being answered by LifeStar.

In Order No. 5621, we gave LifeStar and ResponseCare thirty days to produce any and all documents relating to the apparent transfer and to show cause why a civil forfeiture should not be assessed for knowing and willful violation of the Compact.

LifeStar responded by filing a transfer application on June 14 and a formal response on July 6. In its response, LifeStar acknowledges and describes the transfer of assets from ResponseCare and contends that the transfer does not amount to a knowing and willful violation of the Compact. Although respondents failed to produce the documents required by Order No. 5621, LifeStar requests that respondents be excused from that part of the order since the details of the transfer have now been made known to the Commission.

While these matters were pending the Commission issued two orders on August 4, 1999, assessing \$200 in civil forfeitures against ResponseCare for failing to pay its annual fee for 1999 and failing to file its annual report for 1998.<sup>1</sup> ResponseCare subsequently paid the fee and forfeitures and requests that the Commission waive the filing of the report.

By this order we consolidate all four proceedings, waive production of the documents required by Order No. 5621, waive the filing of ResponseCare's annual report, assess a civil forfeiture against LifeStar and ResponseCare and approve the transfer application subject to applicants' payment of the forfeitures assessed herein.

#### I. ASSESSMENT OF FORFEITURE

A person that knowingly and willfully violates a provision of the Compact is subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for each subsequent violation.<sup>2</sup> Each day of the violation counts as a separate violation.<sup>3</sup> The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>4</sup> The term "willfully" does not mean with evil purpose or criminal intent but, rather, purposely or obstinately, with intentional disregard or plain indifference.<sup>5</sup>

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<sup>1</sup> See Order No. 5674 (failure to pay annual fee); Order No. 5673 (failure to file annual report).

<sup>2</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>3</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>4</sup> In re Carey Limo. D.C., Inc., & ADV Int'l Corp., t/a Moran Limo. Serv., No. AP-94-53, Order No. 4499 at 4 & n.9 (Feb. 16, 1995).

<sup>5</sup> Id.

LifeStar admits purchasing substantially all the assets of ResponseCare on January 22, 1999. As existing WMATC carriers, LifeStar and ResponseCare are charged with the knowledge that transferring a WMATC carrier's assets to another WMATC carrier requires prior Commission approval.<sup>6</sup> LifeStar calls its failure to timely file a transfer application an "oversight," but "employee negligence is no defense."<sup>7</sup>

We therefore assess a civil forfeiture of \$500 against respondents, jointly and severally, for the knowing and willful transfer of assets from ResponseCare to LifeStar without prior Commission approval.<sup>8</sup>

For good cause shown, we will not require any further production of documents, provided respondents timely comply with the requirements of this order.

## II. CONDITIONAL APPROVAL OF APPLICATION

Under Article XI, Section 11(a), and Article XII, Section 3, Subsections (a)(ii) and (c), of the Compact, the Commission may approve the transfer of assets, including a WMATC certificate of authority, from one WMATC carrier to another, if the Commission finds the transfer to be in the public interest. The public interest analysis focuses on the acquiring party's fitness, the resulting competitive balance and the interests of affected employees.<sup>9</sup>

The record contains no evidence that the transfer is likely to produce an adverse effect on employees and/or competition. Applicants aver that all employees will remain on staff, and LifeStar must compete against more than six dozen WMATC carriers specializing in transportation of the disabled.

As for fitness, LifeStar normally would be entitled to a presumption of fitness as an existing WMATC carrier.<sup>10</sup> In this case,

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<sup>6</sup> Id.

<sup>7</sup> Easy Travel, Inc. v. Jet Tours USA, Inc., No. FC-94-01, Order No. 4649 (Aug. 22, 1995).

<sup>8</sup> See In re Old Town Trolley Tours of Wash., Inc., & D.C. Ducks, Inc., No. AP-96-44, Order No. 5053 (Apr. 2, 1997) (WMATC carrier assessed \$500 civil forfeiture for operating property of other WMATC carrier without Commission approval); Order No 4499 (same).

<sup>9</sup> DC Code Ann. § 1-2414 (1992); In re Cavalier Transp. Co., Inc., t/a Tourtime America, Ltd. & Tourtime America Motorcoach, Ltd., No. AP-96-21, Order No. 4926 (Sept. 12, 1996).

<sup>10</sup> In re We Care Project, Inc., & VOCA Corp. of Wash., DC, No. AP-96-47, Order No. 4959 (Oct. 24, 1996); In re Old Town Trolley Tours of Wash., Inc., & D.C. Ducks, Inc., No. AP-96-44, Order No. 4941 (Sept. 25, 1996).

however, LifeStar is not completely entitled to that presumption because of its knowing and willful violation of the Compact.<sup>11</sup>

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.<sup>12</sup>

Acquisition of a WMATC carrier's assets without Commission approval can place the public at risk and, therefore, constitute a serious violation. We do not believe that to be the case here, however. LifeStar has sufficient authority and insurance to operate the wheelchair vans acquired from ResponseCare, and we have found that the transfer does not pose a threat to the competitive balance in the market for wheelchair van service. Further, we do not believe LifeStar acted flagrantly; on the contrary, it was LifeStar that brought this matter to the Commission's attention. We find the filing of the transfer application evidences LifeStar's willingness to comply with the Compact in the future. Payment of the \$500 forfeiture will serve to correct LifeStar's past mistakes.

Based on the evidence in the record, the Commission finds that the transfer of assets, including Certificate No. 440, from ResponseCare to LifeStar is consistent with the public interest.

Because the transfer application contains the information that would have been in ResponseCare's annual report, we waive the filing of that report.

Upon satisfaction of all conditions stated herein, Certificate of Authority No. 440 will merge into Certificate No. 310 and Certificate No. 440 will and stand revoked.<sup>13</sup>

THEREFORE, IT IS ORDERED:

1. That Case Nos. AP-99-42, MP-99-27, MP-99-48, and MP-99-53 are hereby consolidated under Commission Rule No. 20-02 and shall terminate upon applicants' timely compliance with the requirements of this order.

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<sup>11</sup> We recently found LifeStar fit after examining its financial condition, operating condition and statement of intent to comply with the Compact. In re Huntemann Ambulance Service, Inc., & LifeStar Response of Maryland, Inc., No. AP-98-38, Order No. 5472 (Nov. 30, 1998). LifeStar's subsequent violation of the Compact places its compliance fitness at issue in the instant transfer application.

<sup>12</sup> In re Affordable Airport Charter, Inc., & Bach Vu, t/a Affordable Airport Charter, No. AP-97-47, Order No. 5400 (Aug. 31, 1998).

<sup>13</sup> See Order No. 4499 (transferor's certificate retired upon consummation of transfer).

2. That Case Nos. AP-99-48 and MP-99-53 are hereby terminated.

3. That Case Nos. AP-99-42 and MP-99-27 shall terminate upon applicant's timely compliance with the requirements of this order.

4. That upon applicants' timely compliance with the requirements of this order, Certificate of Authority No. 310 shall be reissued to Lifestar Response of Maryland, Inc., trading as LifeStar Response, 6770 Oak Hall Lane, Suite 119, Columbia, MD 21045.

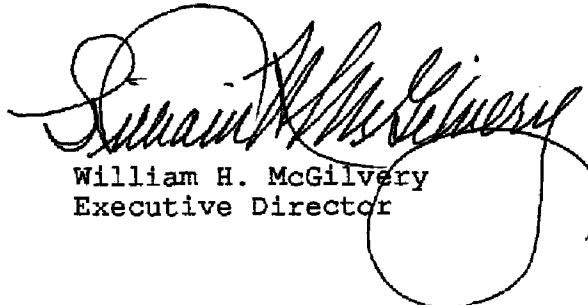
5. That LifeStar may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate of Authority No. 310 has been reissued in accordance with the preceding paragraph.

6. That Lifestar is hereby directed to file the following documents within thirty days: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

7. That applicants shall pay to the Commission within thirty days from the date of this order, by money order, certified check, or cashiers check, the sum of five hundred dollars (\$500).

8. That upon applicants' failure to timely satisfy the conditions of reissuance prescribed herein, the approval of transfer herein shall be void, the application shall stand denied, and applicants shall immediately cease operating between points in the Metropolitan District unless and until otherwise ordered by the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:



William H. McGilvery  
Executive Director